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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,591	01/18/2002	Rudy Mazzocchi	MVA1001USC4	3250

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EXAMINER

BUI, VY Q

ART UNIT PAPER NUMBER

3731

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 10/051,591	Applicant(s) MAZZOCCHI ET AL.	
Examiner Vy Q. Bui	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11 October 2004.
- 2a) This action is **FINAL**.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 and 40-50 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-19, 40-50 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-13, 16-22, 24-32 and 35-50 are rejected under 35 U.S.C. 102(b) as being anticipated by RUSCH (GB-2020557).

As to claims 1-3, 5-13, 16-22, 24-32 and 35-39, RUSCH-'557 (Figs. 1-6, for example) discloses a device comprising solid spring wire/carrying means/metal guidewire 4, longitudinally self-expandable filter 6 (page 2, lines 25-27) defining a cavity in a radially expanded configuration with a proximally facing opening (Fig. 6, for example), means 5 for expanding filter 6, distal band 7, proximal band 1, flexible portion 8 (made of wire guide 4 and plastic outer element) extending distally of the distal end of filter 6 as recited in the claims and having at least one tapered portion.

As to claims 40-50, RUSCH-'557 inherently discloses a method of using the device as mentioned in the above claims. Notice that during a use of the RUSCH device, a physician can make a cavity having a proximally facing opening to trap a material by activate controlling element 4 and the opening inherently will change from a larger diameter to a smaller diameter so as to define a closing step as recited in the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-15, 23 and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over RUSCH (GB-2020557).

RUSCH-'557 discloses substantially all structural limitations as recited in the claims, except for the filter is comprised of a metal or a Nitinol. A metal such as a stainless steel and an alloy such as a nitinol are well known materials which can be used safely in a patient body in the catheter art. It would have been obvious to one of ordinary skill in the art to make filter 6 out of a metal or a nitinol as claimed, for this material would be safe for a deployment in a patient body.

Response to Arguments

Applicant's arguments filed 10/11/2004 have been fully considered but they are not persuasive.

The Applicants argued that: "RUSCH does not show or suggest a "guidewire", while all of the present claims require a "guidewire". A feature of the present invention is that the filter element is carried by a guidewire. In the context of the present application, the term guidewire is properly construed to mean an elongate component that can be used in combination with a number of other medical devices, such as balloon catheters and atherectomy devices. In

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particular, these various other medical devices generally include a central or axial opening able to receive the guidewire, such that the medical device may be tracked along the guidewire from its free end towards its end within the patient's body, the guidewire acting as a guide for positioning the medical device. The guidewire may also act as a guide for the retraction and removal of the medical device after it has been used. See the present application at page 39, lines 14-21; page 43, lines 5-13; page 43, line 27-page 45, line 28; inter alia. This construction of the term "guidewire" is consistent with the meaning understood by those of skill in the art. See, for example, the definition of guidewire in White, et al., A Color Atlas of Endovascular Surgery, J. B. Lippincott Co., Philadelphia, 1990, pages 26-27, attached hereto: In general, guidewires are used to find and secure a pathway through the artery and the stenotic lesion. They pass well into the channel and act as a guide to the subsequent passage of therapeutic devices".

In response, the Examiner would like to assert that a "guidewire" is essentially a wire and element 4/4' (shown in Figs. 1 and 7, for example) is indeed a wire/cable for guiding device 1/11. In addition, there is no other medical device such as a balloon catheter slidable over the guidewire positively recited in the claims. Therefore, it is reasonable for one of ordinary skill in the art to consider element 4/4' as a guidewire as indicated in the rejection above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

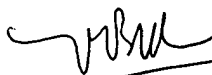
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



12/29/2004

Vy Q. Bui
Primary Examiner
Art Unit 3731